Appendix 1

M-602

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

#33043

BETTYE M. MARSHALL, also known as
BETTYE M. BOHANNON,

Plaintiff,

—against—

AMERADA PETROLEUM CORPORATION,

Defendant.

MEMORANDUM

BRYAN, District Judge:

Defendant Amerada Petroleum Corporation (Amerada) moves to transfer this action to the United States District Court for the Northern District of Oklahoma for the convenience of parties and witnesses, in the interest of justice, pursuant to 28 U.S.C. § 1404(a). Plaintiff opposes transfer.

The controversy involved in this action arose out of the following factual situation:

In 1948 defendant Amerada entered into an agreement with Continental Oil Company (Continental) and Ohio Oil Company (now Marathon) to form a new corporation, the Conorada Petroleum Company (Conorada) to explore foreign petroleum properties and resources. On January 1, 1949, a service contract was entered into in New York between Conorada, Amerada, Continental and Marathon specifying the services Conorada was to provide, including

offices in New York, the establishment and maintenance of its organization and personnel, and the employment of Arthur A. Curtice as President.

A separate employment contract between Curtice, Conorada and the oil companies provided that in addition to a salary, Curtice would be entitled to "a participating interest in each and all concessions, leases and contract rights in respect of petroleum properties or resources" located in foreign areas which would be acquired by the three oil companies "as the result of negotiations initiated by Conorada during the period of Curtice's employment hereunder." This contract further provided that Curtice could grant to one or more Conorada employees any portion of his participating interest.

On January 15, 1949 Curtice employed plaintiff as his executive assistant and granted her a 10% interest in the contract. Conorada terminated the employment of Curtice on February 28, 1954, and on March 18, 1954 new officers were elected to replace him and the plaintiff. At that time Curtice entered into a letter agreement with Conorada and the three oil companies with respect to the areas in which he had earned a participating interest. Libya was not included among them. Plaintiff did not sign this agreement.

When the plaintiff's employment was terminated Libya did not permit foreign corporations to obtain oil concessions. About 1960, however, Libya reversed its position and authorized such concessions. Subsequently, Marathon, Continental and Amerada each obtained separate concessions and have been producing oil in Libya since 1963.

It is plaintiff's contention that authorization of Libyan concessions, and the concessions later obtained there by the three oil companies, resulted from the efforts of Curtice and herself during the period of their employment by

Conorada, and that she is therefore entitled to a participating interest in them.

In September 1963 plaintiff wrote to Amerada, Continental and Marathon of her intention to assert a claim to a participating interest in their Libyan oil production. When negotiations proved fruitless, in June 1964 plaintiff commenced an action against Continental and Marathon in the United States District Court for the District of Columbia where both were doing business.[1] Since Amerada was not doing business in the District of Columbia it could not be joined as a party defendant there. Both Continental and Marathon moved to transfer the District of Columbia action to this district under § 1404(a). Proceedings in the Court of Appeals for the District of Columbia eventually resulted in a denial of the motion to transfer, and in November 1965, Marathon and Continental filed answers. Plaintiff's counsel then wrote to Amerada, suggesting that it voluntarily join the District of Columbia action as a party defendant and indicating that if it did not, plaintiff would be forced to commence a separate suit against it in a district where it was amenable to service.

Instead, however, in March 1966 Amerada commenced an action against plaintiff in the United States Court for the Southern District of Texas seeking a judgment declaring that it was not liable to her.[2] On May 9, 1966 plaintiff made two countermoves: (1) she filed the instant suit

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[1] Since Marathon's principal place of business is Texas, the state of plaintiff's residence, the District of Columbia was the only federal forum in which plaintiff could sue Marathon.

[2] Amerada has stated that while it would have preferred to file its action in the Northern District of Oklahoma, it could effect service upon plaintiff only in Houston, Texas.

in this district, and (2) she moved in the Texas District Court either to transfer that action to this Court or else stay it until the completion of the New York litigation. On June 27, 1966 Judge Connally stayed further proceedings in the Texas action pending the determination of plaintiff's suit in this court.[3] On July 20, 1966 Amerada answered in the action here and made the present motion to transfer.

From this discussion it appears likely that among the issues to be litigated in the case at bar will be the meaning and legal effect of the contractual arrangements on which plaintiff relies and the nature, extent and effectiveness of the efforts made by Curtice and plaintiff toward changing the position of the Libyan Government on foreign oil concessions and in procuring the concessions eventually granted.

The legal principles governing transfer under § 1404(a) are by now so well settled and have been so frequently delineated that it is unnecessary to discuss them again here.

The principal claims made by Amerada in support of the transfer of this action to Oklahoma are (1) that litigation in that district, where its principal office and files are now located, would best serve the convenience of witnesses and parties; (2) that this suit has no logical connection with this district and plaintiff's choice of this district for the suit against Amerada was mere forum shopping; and (3) that the docket in Oklahoma is far less congested than the docket here.

Amerada lists four "potential" witnesses from Tulsa. Three of these are currently officers of Amerada and the fourth Dr. Weatherby, a retired vice president, is an

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[3] This decision is presently being appealed by Amerada to the Court of Appeals for the Fifth Circuit.

active member of its Board of Directors. Three witnesses are from Houston where plaintiff also resides. These include Thanhouser, chief counsel for Continental, who participated in drafting various of the agreements involved here, Clark, a retired Continental employee, and McCollum, Board Chairman of Continental and a Conorada Director until 1962. There are also potential witnesses associated with Marathon who reside in Findlay, Ohio.

Plaintiff, on the other hand, lists as its seven "most important" witnesses the following:

Curtice, a former president of Conorada, and Dohm, a former vice president who succeeded Curtice as president, both of whom hold shares in the participating interest under which plaintiff makes her claim. Curtice is a resident of California and Dohm is now retired and lives in New York. Jacobson, Chairman of the Board and founder of Amerada, is a resident of New York and has an office here. Cram, a former Conorada director and executive of Continental is retired and lives in New York. Donnell, president of Marathon, is evidently a resident of Ohio but his deposition in the District of Columbia suit was taken at his New York office. While McCollum, the Continental Board chairman, is a resident of Houston, his deposition in the District of Columbia action was also taken in New York at the offices of his company there. While plaintiff herself is a resident of Houston, she is a frequent visitor to New York. In addition to these seven witnesses plaintiff indicates that she may call officials of the United States Government from Washington and foreign witnesses from Libya and elsewhere.

When the convenience of witnesses is balanced it is plain that the scales are not even slightly tipped in favor of

transfer to Tulsa. At least three witnesses not now associated with any of the parties presently reside in New York. McCollum from Houston and Donnell from Ohio have already had depositions in the Washington action taken at their New York offices. Of the two other Houston witnesses, Thanhouser, as counsel for Continental, must necessarily be involved in the related Washington litigation. No good reason has been shown why Clark, the only other Houston witness, cannot be brought to New York by Amerada if his testimony is necessary.

As far as witnesses from California or Ohio are concerned, plainly it is at least as convenient, if not more so, for them to come to New York rather than Tulsa. It can scarcely be gainsaid that New York would be more convenient for foreign witnesses and Government witnesses from Washington than Tulsa.

The four Tulsa witnesses are all employees of or associated with Amerada and their convenience can be given little weight on this application. Moreover, Amerada has offices in New York and it would be surprising if its Tulsa officers were not frequently there or that to come here would be much of an inconvenience.

I am wholly unpersuaded that the convenience of witnesses in the sense that that term is used on applications of this nature would be served by a transfer to Tulsa.

Defendant lays stress on what it claims to be the great inconvenience and burden which would be placed upon it by having to litigate in New York. These claims are not persuasive and carry little weight. While its principal offices, legal department and main files are in Tulsa, and Conorada's operations and records were moved there in 1962 and integrated with Amerada's, Amerada has offices

in New York. I cannot imagine that the material needed from its Tulsa files will be so voluminous as to make it unduly difficult for whatever is required to be taken to New York. Indeed, plaintiff says that Amerada has already produced all relevant material in New York pursuant to subpoena issued in the District of Columbia action.

Even though Amerada made the choice not to appear as a party in the Washington action, doubtless its counsel will have to attend the trial and witnesses from Amerada will be required. The fact that the additional New York action was required is largely its own doing and evokes little sympathy.

When balanced against the plaintiff's choice of forum, which should not be lightly disturbed, the foregoing considerations do not militate in favor of transfer.

This is particularly so where, as here, plaintiff's choice of forum rests on an entirely rational basis. The agreement upon which she relies was made in New York. The offices of Conorada where she worked with Curtice were here. It appears likely that questions of New York law will to a substantial degree govern. Plaintiff herself, though a resident of Houston, is frequently in New York and no stranger there.

It was no fault of plaintiff's that she did not sue Amerada in the District of Columbia which was the only place where she could get federal jurisdiction over Marathon and Continental both. She was unable to get jurisdiction over Amerada there and Amerada refused to appear though given the opportunity to do so. The Oil Company defendants in that action were evidently of the view that New York was a proper and convenient forum. The Texas District Court was of the same view.

The charges of forum shopping levelled against plaintiff are wholly without foundation.

Finally, the fact that the docket of this court is considerably more congested than that in the Northern District of Oklahoma, entitled to only slight weight in any event, could not conceivably overcome the factors against transfer which I have just mentioned.

Amerada has wholly failed to sustain its burden of showing that the transfer which it seeks is required for "the convenience of parties and witnesses, in the interest of justice." 28 U.S.C. § 1404(a).

The motion to transfer is in all respects denied.

It is so ordered.

Dated: New York, N.Y.
December 14, 1966

FREDERICK VP. BRYAN
United States District Judge

Appendix 2

TIMETABLE (R. 47-51, 87-92)

1961-Early 1962	Commercial production and marketing of Libyan Oil giving rise to cause of action.	
1962-Early 1963	Attorneys retained by Mrs. Marshall investigate facts and law.	
Sept. 17, 1963	Attorneys for Mrs. Marshall (Batzell & Meyers) transmit formal claim letter to Continental, Marathon and Amerada.	Amerada finds no need and makes no claim for declaratory relief.
End of Sept. and Oct. 1963	Replies by the three oil companies requesting joint meeting.	Ditto
Oct. 25, 1963	Meeting between Mrs. Marshall's counsel and counsel on behalf of three oil companies.	Ditto
Nov. 1963-Jan. 1964	Further correspondence between Marshall's counsel and three oil companies.	Ditto
Jan. 29, 1964	Meeting between counsel for the three oil companies and Marshall's attorneys.	Ditto
Feb.-May 1964	Correspondence between counsel attempting to work out settlement formula.	Ditto
June 12, 1964	Marshall's counsel writes to three oil companies to reject settlement.	Ditto

June 25, 1964	Mrs. Marshall files suit in District of Columbia against Continental and Marathon.	Ditto
July 30, 1964	Continental and Marathon move for transfer of suit (notably to New York on ground of *forum non conveniens*).	Ditto
July 30, 1964-June 1965	Extensive proceedings on motion to transfer.	Ditto
June 29, 1965	U. S. District Court, District of Columbia, retains jurisdiction and denies Continental and Marathon motions.	Ditto
July 7, 1965	Continental and Marathon move to vacate order.	Ditto
Aug. 26, 1965	U. S. District Court denies motion but grants application for certificate to allow appeal. Appeal denied and finally:	Ditto
Nov. 4, 1965	U. S. Court of Appeals denies Leave to Appeal.	Ditto
Nov. 24, 1965	Continental and Marathon answer complaint in District of Columbia.	Ditto
Dec.-Feb. 1965-66	Trial counsel retained by Mrs. Marshall who reviews file and records.	Ditto
Feb. 2, 1966	Depositions of Conorada's officers noticed to commence and continue in New York.	Ditto

Mar. 25, 1966	*Letter of Mrs. Marshall's counsel* (Annexed to moving affidavit) *proposing entry of Amerada into District of Columbia action, failing which separate suit will be instituted.*	
Apr. 5, 1966	Amerada's reply to Mrs. Marshall's counsel advising of filing of declaratory judgment action in Texas.	Amerada first claims need for declaratory relief, in Texas proceeding.